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Supreme Court of the United States

October Term, 1962

No. 843

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES & INLAND WATER DISTRICT, PUERTO RICO DIVISION, AFL-CIO,

Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC., MARITIME TRUCKING COMPANY, INC., and LABOR RELATIONS BOARD OF PUERTO RICO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT VALENCIA BAXT EXPRESS, INC., IN OPPOSITION

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Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC., MARITIME TRUCKING COMPANY, INC.; and LABOR RELATIONS BOARD OF PUERTO RICO,

Respondents.

Opposition to Granting Petition for Writ of Certiorari for Lack of Jurisdiction and Brief for Respondent Valencia Baxt Express, Inc. in Opposition

Respondent, Valencia Baxt Express, Inc., represents to the Court as follows:

1. The original action was instituted by the Labor Relations Board of Puerto Rico (herein called the Board)[1] against respondent and Maritime Trucking Company,

[1] The Board is now identified as a "respondent" but petitioner who was not granted leave to intervene in the Supreme Court of Puerto Rico, does not explain how this result is achieved either under any statute governing review by this Court or the Rules of this Court

Inc.[2] in the Supreme Court of the Commonwealth of Puerto Rico. The opinion was rendered and the judgment sought to be reviewed was entered on October 25, 1962 (App. A of Petition, p. 1a, 16a). A motion made by the petitioner herein (but not the Board) to reconsider and clarify the judgment was denied on November 20, 1962. (App. A of Petition, p. 17a).[3] Accordingly, the time to petition for certiorari (U. S. C. Title 28, Section 2101(c) and Rule 22) expired on January 23, 1963 and was not extended by the so-called motion for reconsideration and clarification (Stern & Gressman, *Supreme Court Practice*, 205-07 (3d. ed. 1962) nor was the period to apply for a writ extended by a Justice of this Court. Hence, even if petitioner has standing to petition for review by this Court, the time for filing the petition expired ninety days after October 25, 1962 or on January 23, 1963 (Rule 34) and filing of the petition on February 19, 1963 was untimely.

2. Equally fatal to this proceeding is the fact that petitioner has no standing to appeal. [Note, *The Discretionary Power of the Supreme Court to Dismiss Appeals from State Courts*, 63 Colum. L. Rev. 688, 695 (1963)] Petitioner's statement of its standing is less than candid, complete or illuminating. Thus, petitioner represents to the Court that the Board "expressed no objection" to its intervention in the suit before the Supreme Court of

[2] This brief is submitted exclusively for Valencia Baxt Express, Inc. No representations are made on behalf of respondent Maritime Trucking Company, Inc.

[3] No opinion was rendered and since the petitioner herein was not an intervenor in the court below, there is no reason to speculate that the motion was considered on the merits.

[4] Petitioner incorrectly states that a "timely petition for rehearing was filed on November 6, 1962" (Petition, p. 2).

Puerto Rico (Petition, p. 5), but it sedulously omits to point out the relevant fact that intervention was not allowed by the Supreme Court of Puerto Rico (App. A to Petition, p. 7a, fn. 3). Since petitioner could not intervene[3] and, at best, had the status of *amicus curiae*, it may not seek review by certiorari (Stern & Gressman, op. cit., at 234-235). Indeed, under U. S. C. Title 28, U. S. C. 1258 "local law determinations by the Supreme Court of Puerto Rico are final and not subject to review by the Supreme Court of the United States" (Stern & Gressman, op. cit., at 158).

Opinion

The opinion of the Supreme Court of Puerto Rico (App. A of Petition, pp. 1a-15a) is not officially reported.

Jurisdiction

The jurisdictional prerequisites for review have not been satisfied for the reasons previously set forth. However, if the foregoing grounds of opposition are rejected, then the jurisdiction of this Court is properly invoked under U. S. C. Title 28, Sections 1257 and 1258(3) and Section 301 of the Labor Management Relations Act, 1947 as amended (U. S. C. Title 29, Section 185).

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[3] The decision by the Supreme Court of Puerto Rico, construing the Commonwealth law (Puerto Rico Labor Relations Act, No. 6 of March 7, 1962, Section 9(2)(c), 29 LPRA, Section 70 (2)(c) (App. A to Petition, p. 19a)), is determinative as to petitioner's status [*Parker v. Illinois*, 333 U. S. 571, (1948); *Central U. Telegraph Co. v. Edwardsville*, 269 U. S. 190 (1925)].

Question Presented

Assuming *arguendo*, the standing of the petitioner to file the petition, the questions presented are these:

(a) Was that part of the arbitration award which prescribed a collective labor agreement within the scope of the submission to the arbitrator and did the Supreme Court of Puerto Rico have the jurisdiction to decide that question and is that determination binding?

(b) If the Supreme Court of Puerto Rico was not empowered to decide whether the award of a collective labor agreement was contemplated by the submission to the arbitrator, did the Court properly hold that it constituted an unenforceable quasi-legislative award?

Statutes Involved

The statute actually involved is the Puerto Rico Labor Relations Act, No. 6 of March 7, 1946, Section 9(2)(c), 29 L. P. R. A. Sec. 702(2)(c) and Section 301 of the Labor Management Relations Act of 1947, as amended (29 U. S. C. Section 185).

Statement

On November 27, 1957, respondent Valencia Baxt Express, Inc., a corporation of Puerto Rico, entered into a labor agreement with the petitioner which was to terminate on November 30, 1960 (unless extended by failure to give timely notice of cancellation). Between November 30, 1960 and February 22, 1961, respondent, bargained with petitioner although respondent claimed that notice of termination had not been given and the agreement had been automatically extended (App. B. of Petition, p. 28).

On February 22, 1961, the petitioner enforced a strike against respondent which continued until March 17, 1961 when the Secretary of Labor of the Commonwealth of Puerto Rico intervened and drafted a settlement agreement between petitioner and respondent and Maritime Trucking Company, Inc. (App. B of Petition, p. 5). The petitioner and the respondent failed to reach an agreement, whereupon the Secretary of Labor, on April 19, 1961, designated Eduardo Gracia as the arbitrator (App. B of Petition, p. 6).

Prior to the commencement of formal hearings before the arbitrator, respondent alleged that it would not participate in the arbitration (App. B of Petition, p. 25). Furthermore, as early as April 28, 1961, respondent and the employees of the respondent advised the arbitrator that petitioner no longer represented the workers and that the latter were opposed to any arbitration proceedings before him (App. B of Petition, pp. 25, 32). On August 10, 1961, the arbitrator rendered his award (App. B of Petition, pp. 25-34). Annexed to the award was a complete and extensive collective bargaining agreement which the arbitrator presumed to prescribe for and impose upon the parties (App. B of Petition, pp. 9-24).

The provisions of the settlement agreement upon which the arbitrator mistakenly relied in prescribing a collective bargaining agreement was Paragraph "3" (App. B of Petition, p. 5). However, the arbitrator expressed doubt about his powers. Nevertheless, he proceeded to write out a complete labor agreement.

After the award was rendered, respondent instituted an action in United States District Court for the District of Puerto Rico to vacate the award. The District Court dismissed the petition in reliance upon the decision in *Boston Printing Pressmen's Union* v. *Potter Press* (241 F. 2d

787 (1957), cert. denied 355 U. S. 817 (1957)) (Petition, p. 4). Thereafter, respondent appealed to the Court of Appeals for the First Circuit. In the meantime, and while the appeal to the Court of Appeals for the First Circuit was pending, the Puerto Rico Labor Relations Board instituted suit in the Supreme Court of the Commonwealth of Puerto Rico to enforce the award (App. B to Petition, pp. 1-4). After a petition for removal of this suit to the United States District Court for the District of Puerto Rico was denied (Petition, p. 4) the Supreme Court of Puerto Rico rendered a judgment in which it refused to enforce that part of the award which prescribed a collective bargaining agreement (App. A of Petition, p. 16a). A subsequent motion for reconsideration made by petitioner and not the Board was denied without opinion (App. A to Petition, p. 17a).

Argument

Apart from the fact that petitioner has no standing to seek review, the issues presented are spurious because they disregard the true nature of the decision by the Supreme Court of Puerto Rico. In any event, the issues, as presented by petitioner, have been before this Court and, hence, there are no federal questions of substance involved, there are no conflicts of decisions to be resolved and the decision of the Supreme Court of Puerto Rico is obviously correct.

I

The decision below did not exclusively involve the question of enforceability of a quasi-legislative award and is clearly correct.

The burden of the petitioner's claim is that a quasi-legislative award must be enforced and that the contrary holding in *Boston Printing Pressmen v. Potter Press, Inc.*, [141 F. Supp. 553 (1956), aff'd 241 F. 2d 787 (1957), cert. denied 355 U. S. 817 (1957)] was modified by *Retail Clerks Local 128 v. Lion Dry Goods, Inc.* [369 U. S. 17 (1962)] (Petition, p. 7). Hence, petitioner contends that quasi-legislative awards are now enforceable by reason of the *Lion* decision (Petition, pp. 8-9).

The difficulties with this argument are both lack of merit and the erroneous assumptions upon which it is based. In essence, the Supreme Court of Puerto Rico decided that the arbitrator exceeded the scope of the submission (Appendix A to Petition, p. 8a) and that the arbitrator was not authorized to "draw up a whole collective agreement" (Appendix A to Petition, pp. 8a-9a). The arbitrator's assumption of authority is described by the Supreme Court as "groundless" (App. A of Petition, p. 9a).

The inquiry by the Supreme Court of Puerto Rico is consistent with the lesson of *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U. S. 574 (1960) in which this Court held:

> "It is clear that under both the agreement in this case and that involved in *American Manufacturing Co.* * * * the question of arbitrability is for the courts to decide" (363 U. S. at 583 n. 7).

Unlike the situation in the triology [*United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, 363 U. S. 593 (1960); *United Steelworkers of America* v. *Warrier and Gulf Navigation Company*, 363 U. S. 574 (1960); *United Steelworkers of America* v. *American Manufacturing Company*, 363 U. S. 564 (1960)] the dispute did not arise under an existing collective bargaining agreement. Indeed, even where a collective bargaining agreement is the source of the demand for arbitration or the award, a court may properly inquire "whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made" (*United Steelworkers of America* v. *Warrior & Gulf Navigation Company*, *supra*, at p. 582). It was, therefore, entirely appropriate for the Supreme Court of Puerto Rico to determine that the arbitrator had no authority under the submission to prescribe and impose a collective bargaining agreement. This conclusion follows this Court's instruction that an "award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." (*United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, *supra*, at p. 597).

The Supreme Court of Puerto Rico was empowered to test the award against the submission and properly refused enforcement because the award exceeded the scope of the submission. In *Local 174, Teamsters* v. *Lucas Flour Co.* [369 U. S. 95 1962] and in *Dowd Box Co.* v. *Courtney*, [368 U. S. 502 (1962)], this Court held that state courts may exercise concurrent jurisdiction with federal courts in suits brought under Section 301.

Contrary to the petitioner's contention, the decision in the *Lion* case did not change the direction originally marked out by *Textile Workers Union of America* v. *Lincoln Mills of Alabama* [353 U. S. 448 (1957)] and later channelized by the triology of *United Steelworkers* cases. In the *Lion* case, *supra*, this Court held that a strike settlement agreement is a contract within the meaning of Section 301 of the Federal Labor Act but declined to pass upon the claim that it constituted a collective bargaining agreement [369 U. S. 17 at 28]. But *Lion* did not involve a quasi-legislative award nor a determination that the grievance involved was not covered by the strike settlement agreement. Indeed, the employers in *Lion*, unlike respondent, participated in the arbitration proceedings [369 U. S. 17 at 23] but denied that the award could be enforced in a Section 301(a) suit. All that this Court held was that a suit for violation of a contract, including a strike settlement agreement, may be maintained under Section 301. [Cox, "*Current Problems in the Law of Grievance Arbitration*", 30 Rocky Mt. L. Rev. 247 (1958); Hays, *The Supreme Court and Labor Law*, October Term, 1959, 60 Colum. L. Rev. 901 (1960); Shulman, "*Reason, Contract and Law in Labor Relations*", 68 Harv. L. Rev. 999 (1955).]

Plainly, then, as a matter of state and federal law, a court may determine whether a given dispute is subject to arbitration and, initially, whether an award is within the scope of the arbitration clause or submission.

II

There is no conflict of decisions and no important federal questions of substance to be decided.

In *Boston Printing Pressmen's Union* v. *Potter Press*, [241 F. 2d 787 (1957)] the Court of Appeals for the First Circuit expressly held that a quasi-legislative award could not be enforced in a suit under Section 301. When this Court denied the petition for a writ of certiorari in this case (355 U. S. 817) on October 14, 1957, *Lincoln Mills, supra*, and *General Electric Company* v. *Local 205, United Electrical, Radio & Machine Workers of America* [353 U. S. 547 (1957)] had been decided. While a denial of a writ of certiorari is not an evaluation of merits [*Maryland* v. *Baltimore Radio Show, Inc.*, 338 U. S. 912, 919 (1950)], it indicates that the Court did not think the issue presented there and the very one involved here, merited the exercise of jurisdiction (Rule 19). Petitioner's reliance upon the decision in *Division No. 892, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America* v. *M. K. & O Transit Lines, Inc.*, 210 F. Supp. 351 (N. D. Okla. 1962) is misplaced. To begin with, that decision presupposes that the *Boston Printing Pressmen's Union* case, *supra*, is "at odds with rulings of the Supreme Court" (p. 356) but the facts are plainly distinguishable because the contract clause contemplated "changes, additions and modifications" (p. 353) of an existing collective bargaining agreement and the District Court properly held that the "right to arbitration does not expire with the expiration of the labor contract" (p. 356). Indeed, the District Court properly held that the *Boston Printing Pressmen's* case was "not in point" (p. 356) and its comment as to the validity of the

opinion is pure *dicta*. Now, in point (and apparently overlooked by petitioner in its research) is the decision in *Couch v. Prescolite Manufacturing Corporation* [191 F. Supp. 737 (W. D. Ark. 1961)]. There is, therefore, no conflict of decisions nor any federal questions of substance to be resolved.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

HERBERT BURSTEIN,
Counsel for Respondent.

Dated: May 14, 1963.